

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Qwest Petition for Forbearance Under)
47 U.S.C. § 160(c) from Resale, Unbundling and)
Other Incumbent Local Exchange Requirements) WC Docket No. 07-9
Contained in Sections 251 and 271 of the)
Telecommunications Act of 1996 in the)
Terry, Montana Exchange)

MEMORANDUM OPINION AND ORDER

Adopted: April 21, 2008

Released: April 21, 2008

By the Commission:

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I. INTRODUCTION

1. In this Order, we address a petition filed by Qwest Corporation (Qwest) pursuant to section 10 of the Communications Act of 1934, as amended (Act), seeking certain forbearance relief in the Terry, Montana local exchange (Terry exchange).¹ Qwest requests that the Commission forbear from

¹ Qwest Petition for Forbearance under 47 U.S.C. § 160(c) from Resale, Unbundling and Other Incumbent Local Exchange Requirements Contained in Sections 251 and 271 of the Telecommunications Act of 1996 in the Terry, Montana Exchange (filed Jan. 22, 2007) (Qwest Petition or Petition).

applying the requirements of sections 251(c) and 271(c) to Qwest, and from otherwise regulating Qwest as an incumbent local exchange carrier (LEC), in the Terry exchange. This petition presents a unique set of facts where for the purposes of section 251's requirements there are two incumbent LECs competing in the same exchange, both with their own independent networks, and with no other competitors in the exchange. For the reasons set forth below, we grant Qwest forbearance from certain requirements of sections 251(c), 271(c), and 252 to the extent discussed herein. Qwest's petition is otherwise denied.

II. BACKGROUND

A. Statutory and Regulatory Requirements

2. *Sections 251(c) and 252 Requirements.* The Act includes a number of provisions designed to promote the development of competitive markets.² As noted above, Qwest seeks relief from all section 251(c) obligations,³ which are the duties to: negotiate in good faith the terms and conditions of section 251(b) and (c) agreements; provide interconnection to any requesting telecommunications carrier for the transmission and routing, at any technically feasible point, of telephone exchange service and exchange access service; provide unbundled network elements (UNEs) for the provision of telecommunications service; offer for resale at wholesale rates any telecommunications service that the carrier provides at retail; provide reasonable notice of network changes; and provide collocation.⁴ Section 252 sets forth procedures for the negotiation, arbitration, and approval of agreements whenever a requesting carrier seeks to negotiate an agreement related to section 251(b) or (c) with an incumbent LEC.⁵

3. *Section 271(c)(2)(B) Requirements.* Section 271(c)(2)(B) of the Act sets forth a 14-point "competitive checklist" of access, interconnection, and other threshold requirements that a Bell Operating Company (BOC) must demonstrate that it satisfies before that BOC can be authorized to provide in-region, interLATA services.⁶ After a BOC obtains section 271 authority to offer in-region interLATA

² See, e.g., 47 U.S.C. § 251.

³ Qwest seeks forbearance relief from section 251(c)(1) only to the extent that it requests relief from the other section 251(c) obligations. Qwest does not seek relief from the obligations of section 251(c)(1) as it applies to Qwest's section 251(b) duties. See Qwest Petition at 5.

⁴ See 47 U.S.C. §§ 251(b), and 251(c)(1)-(6); see also 47 C.F.R. §§ 51.301 (implementing section 251(c)(1)), 51.305 (implementing section 251(c)(2)), 51.301-.319, 51.321, 51.323 (implementing section 251(c)(3)), 51.601-.617 (implementing section 251(c)(4)), 51.325-.335 (implementing section 251(c)(5)), and 51.323 (implementing section 251(c)(6)). The UNE obligations were described in the *Qwest Omaha Forbearance Order*, so we do not repeat that summary here. See *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415, 19417-22, paras. 3-11 (2005) (*Qwest Omaha Forbearance Order*), *aff'd*, *Qwest Corp. v. FCC*, 482 F.3d 471 (D.C. Cir. 2007).

⁵ See 47 U.S.C. § 252.

⁶ See 47 U.S.C. § 271(c)(2)(B). The Commission previously granted all of the BOCs, including Qwest, forbearance from section 271 unbundling obligations for the broadband elements that the Commission, on a national basis, relieved from section 251(c)(3) unbundling in the *Triennial Review Order*, and subsequent reconsideration orders. See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (*Triennial Review Order*) (subsequent history omitted); *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*; *SBC Communications Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c)*; *Qwest Communications International Inc. Petition for Forbearance Under 47 U.S.C. § 160(c)*; *BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 U.S.C. § 160(c)*, WC Docket Nos. 01-338, 03-235, 03-260, 04-48, 19 FCC Rcd 21496, (continued....)

services, these threshold requirements become ongoing requirements.⁷ Because Qwest is a BOC that has been granted the authority to provide interLATA services in its in-region states, including Montana, it is subject to the requirements of section 271(c)(2)(B).⁸

B. Prior Forbearance Relief from Incumbent LEC Obligations

4. *Qwest Omaha Forbearance Order*. On December 2, 2005, the Commission released an order granting in part a petition filed by Qwest seeking forbearance from the application of certain dominant carrier regulation and UNE obligations in the Omaha Metropolitan Statistical Area (MSA).⁹ With respect to Qwest's requested forbearance from unbundling obligations, in the *Qwest Omaha Forbearance Order*, the Commission held that section 251(c)(3) had been "fully implemented" nationwide,¹⁰ and it granted Qwest forbearance from section 251(c)(3) unbundling obligations in nine of the 24 wire centers in the Omaha MSA. In granting this relief, the Commission relied on the state of competition and level of competitive facilities deployment in those nine wire centers, as well as certain other regulatory safeguards, such as continued availability of section 251(c)(4) resale and section 271 unbundled elements.¹¹ The Commission concluded that, in areas served by those nine wire centers, Cox Communications, Inc. (Cox), the local cable operator, had built out "extensive facilities" and was using

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21504, para. 19 (2004) (*Section 271 Broadband Forbearance Order*), *aff'd sub nom. Earthlink, Inc. v. FCC*, 462 F.3d 1 (D.C. Cir. 2006). These elements include fiber-to-the-home (FTTH) loops, fiber-to-the-curb (FTTC) loops, the packetized functionality of hybrid loops, and packet switching. *See Section 271 Broadband Forbearance Order*, 19 FCC Rcd at 21504, para. 19. Subsequent to the issuance of the *Triennial Review Order*, the Commission further developed its analysis of FTTH loops, for which the Commission had found no unbundling obligation for new construction and for overbuild situations where the incumbent LEC does not retire existing copper loops. *See Triennial Review Order*, 18 FCC Rcd at 17142, para. 273. In the *MDU Reconsideration Order*, the Commission determined that the section 706 considerations that partly justified the *Triennial Review Order*'s FTTH unbundling relief should be extended to encompass FTTH loops serving predominantly residential multiple dwelling units (MDUs). *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Order on Reconsideration, 19 FCC Rcd 15856, 15858, paras. 7-9 (2004) (*MDU Reconsideration Order*). Subsequently, in the *FTTC Reconsideration Order*, the Commission found that the FTTH analysis also applies to FTTC loops – which are loops that bring fiber from the central office to a location near the customer's premises – and granted the same unbundling relief to FTTC as applied to FTTH. *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Order on Reconsideration, 19 FCC Rcd 20293, 20297-20303, paras. 9-19 (2004) (*FTTC Reconsideration Order*); *see also id.* at 20293, para. 1 n.1. To the extent Qwest seeks identical relief in its present petition, we dismiss its request as moot.

⁷ See 47 U.S.C. § 271(d)(6). The section 272(c)(2)(B) checklist obligations were described in the *Qwest Omaha Forbearance Order*, so we do not repeat that summary here. *See Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19419-21, paras. 7-9.

⁸ *See Application by Qwest Communications International, Inc. for Authorization to Provide In-region, InterLATA Services in the Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, WC Docket No. 02-314, Memorandum Opinion and Order, 17 FCC Rcd 26303 (2002) (*Qwest MT 271 Order*).

⁹ *See Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19417, para. 2.

¹⁰ *Id.* at 19440, para. 53 (concluding that section 251(c) is "fully implemented" because the Commission has issued rules implementing section 251(c) and those rules have gone into effect).

¹¹ *See Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19447, para. 64; *see also* 47 U.S.C. §§ 251(c)(4) (resale obligation), 271(c)(2)(B) (competitive checklist).

those facilities to provide service to customers in competition with Qwest.¹² Although Cox leased some wholesale last-mile inputs from Qwest pursuant to voluntary commercial agreements, Cox provided competition to Qwest without accessing UNEs provided by Qwest pursuant to section 251(c)(3).¹³ To avoid customer disruption, the Commission adopted a six-month transition period for customers of competitive LECs, other than Cox, that relied on Qwest's UNEs offered pursuant to section 251(c)(3).¹⁴

5. The Commission declined to grant Qwest forbearance from its section 251(c)(3) unbundling obligations in the remaining 15 wire centers in the Omaha MSA where Cox's facilities deployment was less extensive.¹⁵ The Commission also denied Qwest forbearance from certain section 271 obligations, to which Qwest is subject as a BOC.¹⁶ Specifically, the Commission denied Qwest forbearance from section 271 checklist items 4, 5, and 6, which establish independent obligations to provide unbundled access to local loops, local transport, and local switching,¹⁷ and it relied on the continued availability of wholesale access to Qwest's network under section 271 in forbearing from section 251(c)(3).¹⁸

6. *ACS UNE Forbearance Order.* On September 30, 2005, ACS filed a petition with the Commission seeking relief from section 251(c)(3) unbundling obligations similar to that granted to Qwest in the *Qwest Omaha Forbearance Order*.¹⁹ On December 28, 2006, the Commission, in the *ACS UNE Forbearance Order*, granted in part ACS's petition for forbearance from section 251 unbundling. Subject to certain specific conditions, the Commission granted ACS forbearance from the obligation to provide unbundled loops and dedicated transport pursuant to sections 251(c)(3) and 252(d)(1) in certain wire centers in Anchorage based on the development of facilities-based competition and other factors.²⁰ First,

¹² *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19444, para. 59; see also *Wireline Competition Bureau Discloses Cable Coverage Threshold in Memorandum Opinion and Order Granting Qwest Corporation Forbearance Relief in the Omaha Metropolitan Statistical Area*, WC Docket 04-223, Public Notice, 22 FCC Rcd 13561 (2007) (*Qwest Coverage Public Notice*) (disclosing, after receiving Cox's consent to disclose the coverage threshold in the *Qwest Omaha Forbearance Order*, that Qwest was granted unbundling relief in those wire center service areas where, among other things, Cox's voice-enabled cable plant covered more than 75 percent of the end-user locations that were accessible from those wire centers).

¹³ See *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19450, para. 69 n.186 (stating that "Cox does not itself rely on Qwest's UNEs to compete").

¹⁴ See *id.* at 19452-53, paras. 73-74.

¹⁵ See *id.* at 19444-45, para. 60.

¹⁶ See *id.* at 19460, para. 90; see also 47 U.S.C. § 153(4) (defining "Bell operating company").

¹⁷ See *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19465, para. 100; 47 U.S.C. § 271(c)(2)(B)(iv)-(vi).

¹⁸ See *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19446-47, 19449-50, 19452, 19455, paras. 62, 64, 67-68, 71, 80.

¹⁹ See Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area, WC Docket No. 05-281 (filed Sept. 30, 2005).

²⁰ See Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area, WC Docket No. 05-281, Memorandum Opinion and Order, 22 FCC Rcd 1958, 1971, para. 22 (2007) (*ACS UNE Forbearance Order*), appeals dismissed, *Covad Communications Group, Inc. v. FCC*, Nos. 07-70898, 07-71076, 07-71222 (9th Cir. 2007) (dismissing appeals for lack of standing); see also *Wireline Competition Bureau Discloses Cable Coverage Threshold in Memorandum Opinion and Order Granting ACS of Anchorage, Inc. Forbearance Relief in the Anchorage, Alaska Study Area*, WC Docket No. 05-281, Public Notice, 22 FCC Rcd 11962 (2007) (*ACS Coverage Public Notice*) (disclosing, after receiving GCI's consent to disclose the coverage threshold in the *ACS UNE* (continued....))

the Commission granted ACS relief from section 251(c)(3) unbundling obligations and section 252(d)(1) pricing obligations in the five of the 11 wire centers in the Anchorage study area where it found that the level of facilities-based competition by General Communication, Inc. (GCI), ACS's main competitor in the Anchorage study area, ensured that market forces would protect the interests of consumers and that such regulation, therefore, was unnecessary. Second, as a condition of the order, the Commission required ACS to make loops and certain subloops available in those five wire centers, by no later than the end of the transition period, at the same rates, terms, and conditions as those negotiated between GCI and ACS in Fairbanks, Alaska until commercially negotiated rates are reached. Third, the Commission provided for a one-year transition period before the forbearance grant takes effect.²¹ Since that time, ACS and GCI reached an agreement governing ACS's continued provision of access to the specified elements in the Anchorage study area during the next five years.²²

7. *Verizon 6 MSA Forbearance Order.* On September 6, 2006, Verizon sought certain forbearance relief in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach MSAs.²³ Specifically, Verizon sought relief from dominant carrier regulation of its mass market switched access services,²⁴ from section 251(c)(3) loop and transport unbundling obligations (UNE obligations),²⁵ and from all *Computer III* obligations (e.g., open network architecture (ONA) and comparably efficient interconnection (CEI) requirements).²⁶ On December 5, 2007, the Commission denied Verizon its requested relief.²⁷ First, the Commission denied Verizon relief from dominant carrier regulation of mass market switched access services in the six MSAs because its market shares in these MSAs indicated that competition was not adequate to ensure that charges, practices, classifications, or regulations are just and reasonable, and not unjustly or unreasonably discriminatory.²⁸ Second, the Commission determined that Verizon was not subject to a sufficient level of facilities-based competition in these MSAs to grant relief from section 251(c)(3) unbundling obligations.²⁹ Finally, the Commission

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Forbearance Order, that ACS was granted unbundling relief in those wire center service areas where, among other things, GCI's voice-enabled cable plant covered more than 75 percent of the end-user locations that were accessible from those wire centers).

²¹ See *ACS UNE Forbearance Order*, 22 FCC Rcd at 1960, para. 2.

²² See Letter from Karen Brinkmann, Counsel for ACS of Anchorage, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-109 at 2 (filed May 24, 2007); see also Letter from Karen Brinkmann *et al.*, Counsel for ACS of Anchorage, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-109 at 2 (filed June 29, 2007).

²³ *Petition of Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(C) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas, Inc.*, WC Docket No. 06-172, Memorandum Opinion and Order, 22 FCC Rcd 21293, 21924-25, paras. 1-2 (2007) (*Verizon 6 MSA Order*); *pet. for review pending*, No. 08-1012 (D.C. Cir. filed Jan. 14, 2008).

²⁴ Verizon sought forbearance from the following: tariffing requirements, price cap regulation, and dominant carrier requirements concerning the processes for acquiring lines, discontinuing services, assignment or transfers of control, and acquiring affiliations. 47 C.F.R. §§ 61.32, 61.33, 61.38, 61.41-49, 61.58, 61.59, 63.03, 63.04, 63.60-66. See *Verizon 6 MSA Order*, 22 FCC Rcd at 21924, para. 1.

²⁵ 47 C.F.R. § 51.319(a), (b), (e).

²⁶ *Verizon 6 MSA Order*, 22 FCC Rcd at 21307-11, paras. 27-34.

²⁷ *Id.*

²⁸ *Id.* at 21307-08, para. 27.

²⁹ *Id.* at 21312, para. 36.

denied Verizon's petition for relief from *Computer III* requirements because Verizon continues to possess exclusionary market power.³⁰

C. Qwest's Forbearance Petition in the Terry Exchange

8. On August 31, 2006, the Commission concluded that Mid-Rivers Telephone Cooperative, Inc. (Mid-Rivers) should be treated as an incumbent LEC for the purposes of section 251 in the Terry, Montana exchange pursuant to section 251(h)(2).³¹ In reaching this conclusion, the Commission found that Mid-Rivers served approximately 85 to 93 percent of the access lines in the Terry exchange, and that Mid-Rivers had completely overbuilt the Terry exchange.³² The Commission also concluded that Mid-Rivers' operations in the Terry exchange should remain subject to existing competitive LEC regulation for interstate purposes pending further Commission action.³³ In addition, the Commission concluded that Qwest, the legacy incumbent LEC in the Terry exchange, should be subject to non-dominant regulation for its interstate telecommunications services in that exchange pending further action.³⁴

9. On January 22, 2007, Qwest filed its Petition requesting that the Commission forbear from applying the requirements of sections 251(c) and 271(c) to Qwest, and from otherwise regulating Qwest as an incumbent LEC, in the Terry exchange.³⁵ Qwest argues it should no longer be regulated as an incumbent LEC in the Terry exchange because it no longer has the only last-mile facilities in the exchange, the Commission has found that Mid-Rivers' facilities appear to be technically superior to

³⁰ *Id.* at 21318-19, para. 45.

³¹ *See Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring it to be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2)*, WC Docket No. 02-78, Report and Order, 21 FCC Rcd 11506 (2006) (*Mid-Rivers Order*).

³² *See id.* at 11511, para. 12 n.34.

³³ *See id.* at 11521-22, para. 35. The Commission did not address the appropriate long-term regulatory treatment of Mid-Rivers in the Terry exchange, and left that issue to be addressed in Mid-Rivers' future study area boundary waiver request. *See id.* On March 14, 2008, Mid-Rivers filed a study area boundary waiver request for the Terry exchange. *See Mid-Rivers Telephone Cooperative, Inc. Petition for Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules; Petition for Waiver of Section 69.3(e)(11) of the Commission's Rules*, CC Docket No. 96-45 (filed Mar. 14, 2008). The Wireline Competition Bureau has sought comment on Mid-Rivers' petition. *See Comment Sought on the Petition of Mid-Rivers Telephone Cooperative, Inc. to Waive the Study Area Boundary Freeze, as Codified in Part 36, and Section 69.3(e)(11) of the Commission's Rules*, CC Docket No. 96-45, Public Notice, DA 08-779 (rel. Apr. 3, 2008).

³⁴ *See id.* at 11519-21, paras. 29-34. The Commission stated that it would consider removal of additional regulatory obligations in the Terry exchange if Qwest filed a formal petition requesting such relief. *See id.* at 11520-21, para. 34.

³⁵ *See Qwest Petition* at 1, 4 ("Specifically, Qwest seeks forbearance from regulation as an incumbent under Sections 224, 251, 252, 259, 271 and 275, and any regulations enacted pursuant to those provisions."). Qwest later withdrew its request for forbearance from sections 224, 259, 275, and 271(c)(2)(B)(iii). *See Letter from Daphne E. Butler, Corporate Counsel, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-9 (filed Mar. 28, 2008); Letter from Daphne E. Butler, Corporate Counsel, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-9 (filed Mar. 31, 2008) (Qwest Mar. 31, 2008 Ex Parte Letter).*

Qwest's, and that Mid-Rivers serves substantially all of the customers in the Terry exchange.³⁶ The Commission sought comment on Qwest's petition.³⁷

III. DISCUSSION

10. In this section, we evaluate Qwest's forbearance request under the statutory criteria of section 10(a) of the Act.³⁸ The Commission previously has evaluated requests for relief similar to that sought by Qwest in the *Qwest Omaha Forbearance Order* and the *ACS UNE Forbearance Order*, and the analytical framework established in that precedent guides our actions here. Based on the record evidence filed in this proceeding, we find that granting Qwest forbearance from certain requirements of sections 251(c), 271(c), and 252 in the Terry exchange is warranted.

A. Forbearance Standard

11. The Commission is required to forbear from any statutory provision or regulation if it determines that: (1) enforcement of the regulation is not necessary to ensure that the telecommunications carrier's charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary to protect consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.³⁹ Forbearance is warranted under section 10(a) only if all three elements of the forbearance criteria are satisfied.⁴⁰ In making such determinations, the Commission also must consider pursuant to section 10(b) "whether forbearance from enforcing the provision or regulation will promote competitive market conditions."⁴¹

B. Forbearance Analysis for Section 251(c)

12. By applying Commission precedent, we determine that forbearance from the application of sections 251(c)(2)-(6) to Qwest in the Terry exchange meets the standards set forth in section 10(a) of

³⁶ See *id.* at 3; see also Letter from Daphne E. Butler, Senior Attorney, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-9 at 1 (filed Feb. 5, 2008) (Qwest Feb. 5, 2008 *Ex Parte* Letter).

³⁷ See *Pleading Cycle Established for Comments on Qwest Corporation's Petition for Forbearance under 47 U.S.C. § 160 from Sections 251(c) and 271(c) and from Incumbent Local Exchange Carrier Treatment in the Terry, Montana Local Exchange*, WC Docket No. 07-9, Public Notice, 22 FCC Rcd 2173 (2007). Mid-Rivers was the only party to file comments in response to the Public Notice. In its comments, Mid-Rivers states that it does not oppose the petition and "remains indifferent to Qwest's regulatory status because it is not dependent on Qwest services or facilities to offer its services." Mid-Rivers Comments at 1-2.

³⁸ See 47 U.S.C. § 160(a).

³⁹ See *id.*

⁴⁰ See *Cellular Telecomms. & Internet Ass'n v. FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003) (explaining that the three prongs of section 10(a) are conjunctive and that the Commission could properly deny a petition for failure to meet any one prong); see also *Petition of Core Communications, Inc. for Forbearance from Sections 251(g) and 254(g) of the Communications Act and Implementing Rules*, WC Docket No. 06-100, Memorandum Opinion and Order, 22 FCC Rcd 14118, 14125, para. 12 (2007).

⁴¹ 47 U.S.C. § 160(b). We note that section 10(d) provides that the Commission may not forbear from applying the requirements of section 271 or section 251(c) unless it determines that those requirements are "fully implemented." 47 U.S.C. § 160(d). In the *Qwest Omaha Forbearance Order*, the Commission determined that, for purposes of section 10(d), the requirements of section 251(c) are fully implemented nationwide and may be subject to forbearance. See *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19439-42, paras. 51, 53-56; see also *Qwest MT 271 Order*, 17 FCC Rcd 26303 (concluding that Qwest had taken the statutorily required steps in section 271 to open its local exchange markets in Montana, among other states, to competition).

the Act.⁴² Specifically, in light of the unique circumstances in the Terry exchange, the record evidence in this proceeding demonstrates that Qwest is subject to a sufficient level of facilities-based competition in the Terry exchange under the Commission's *Qwest Omaha, ACS UNE*, and *Verizon 6 MSA* precedent. Further, there are no competitors in the Terry exchange that rely on Qwest's interconnection, wholesale, or UNE services.⁴³ Thus, we forbear from applying each of section 251(c)(2)-(6)'s obligations to Qwest in the Terry exchange. In addition, given our forbearance from sections 251(c)(2)-(6), we find that Qwest's section 251(c)(1) duty to negotiate agreements in good faith to fulfill its duties under section 251(c) is no longer applicable. Therefore, we need not address Qwest's request for forbearance regarding section 251(c)(1).

1. Sections 251(c)(2), (5), and (6) Interconnection-Related Obligations

13. We begin our analysis by examining competition in the Terry exchange.⁴⁴ Given the relatively small size of the Terry exchange, its relative isolation from major metropolitan areas, and the absence of any large business customers, we conclude, based on our prior finding for this exchange, that there is no need to analyze the retail and wholesale markets separately as the Commission typically does in the forbearance context.⁴⁵ With respect to competition, Qwest's market share in the Terry exchange supports the grant of forbearance from sections 251(c)(2), (5), and (6) of the Act. As the Commission previously found, Mid-Rivers serves approximately 93 percent of the access lines in the entire Terry exchange, has a ubiquitous network in the Terry exchange, and can serve the entire exchange with its own facilities.⁴⁶ Further, Qwest has indicated that its retail access lines in service in the Terry exchange have continued to decline in number.⁴⁷ This showing of competition ensures that Qwest is unable to implement charges, practices, classifications, or regulations that are not just and reasonable or that are unjustly or unreasonably discriminatory in this exchange.

14. Further, unlike the circumstances in the *Qwest Omaha Forbearance Order*, Mid-Rivers, Qwest's competitor in the Terry exchange, did not utilize section 251(c)(2) interconnection elements to enter the Terry market, and does not rely on access to Qwest's network in order to exchange telecommunications traffic.⁴⁸ In addition, as we have found previously, it is unlikely that other carriers will enter the Terry exchange, given that Mid-Rivers has overbuilt Qwest's network and that Terry is a

⁴² See *supra* Section II.A (outlining the obligations of section 251(c)).

⁴³ See Qwest Petition at 7-8.

⁴⁴ See *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19447, para. 65; *ACS UNE Forbearance Order*, 22 FCC Rcd at 1974, para. 27.

⁴⁵ See *Mid-Rivers Order*, 21 FCC Rcd at 11511, para. 12 n.31 (finding that there is no need to analyze mass market and business markets separately in the Terry exchange for the purposes of determining whether Mid-Rivers' market position is comparable to that of a legacy incumbent LEC). Terry, Montana, the county seat of Prairie County, is located in a county with a population of fewer than 2,000. There are only a few hundred access lines in Terry, Montana and the nearest city is approximately 200 miles away. See Mid-Rivers Comments at 2; see also http://www.city-data.com/county/Prairie_County-MT.html (visited Jan. 16, 2008); <http://www.prairie.mt.gov/> (visited Jan. 16, 2008).

⁴⁶ See *Mid-Rivers Order*, 21 FCC Rcd at 11506-07, para. 2 n.3; see also Mid-Rivers Comments at 1; Qwest Feb. 5, 2008 *Ex Parte* Letter at 1.

⁴⁷ See Qwest Feb. 5, 2008 *Ex Parte* Letter at 1.

⁴⁸ Compare *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19457, para. 85 (stating that "all" of Qwest's competitors in the Omaha MSA rely "extensively" on access to Qwest's network in order to exchange telecommunications traffic) with Mid-Rivers Comments at 1-2 (stating that Mid-Rivers remains indifferent to Qwest's regulatory status because it does not depend on Qwest services or facilities to offer its services).

very small rural town.⁴⁹ These unique competitive circumstances in the Terry exchange also support our determination that enforcement of sections 251(c)(2), (5), and (6) is not necessary to ensure that charges, practices, classifications, or regulations in the Terry exchange are just and reasonable and are not unjustly or unreasonably discriminatory. This is in contrast to the circumstances involved in the *Qwest Omaha Forbearance Order*, where the Commission found that competitive carriers had constructed their networks using direct interconnection with Qwest and collocation as a way to interconnect with all of the carriers in the Omaha MSA due to the ubiquity of Qwest's network and its direct connection obligations.⁵⁰

15. The second prong of section 10(a) states that the Commission shall consider whether "enforcement of such regulation or provision is not necessary for the protection of consumers."⁵¹ Based on the competitive showing above, forbearance from the requirements of sections 251(c)(2), (5), and (6) does not place consumers in jeopardy. Mid-Rivers comments that it has an interconnection agreement with Qwest, which permits calling between the subscribers of the two carriers in Terry,⁵² and customers also remain protected under section 251(a)(1)'s interconnection obligation.⁵³ Further, since Mid-Rivers and Qwest compete for customers in the Terry exchange, we conclude that our forbearance action will not endanger consumers because each party has an interest in providing service to these consumers.

16. We also find that relieving Qwest from the section 251(c)(2), (5), and (6) obligations is in the public interest under section 10(a)(3) because Qwest now faces substantial competition in the Terry exchange that does not rely on Qwest's network.⁵⁴ The Commission recognizes that relieving Qwest of the obligation to interconnect leaves Mid-Rivers, as the incumbent LEC for the purposes of section 251, the sole party responsible for providing these services in the Terry exchange.⁵⁵ However, as we found in the *Mid-Rivers Order*, we believe that it is unlikely that another competitor will enter the Terry exchange because the Terry exchange is a very small rural exchange that there already exist two facilities-based service providers in the Terry exchange.⁵⁶

2. Section 251(c)(3) Unbundled Access Obligations

17. As we discussed above, Mid-Rivers serves approximately 93 percent of the access lines in the entire Terry exchange, has a ubiquitous network in the Terry exchange, and can serve the entire exchange with its own facilities.⁵⁷ Further, Qwest has indicated that its retail access lines in service in the

⁴⁹ See *Mid-Rivers Order*, 21 FCC Rcd at 11515, para. 19 n.56.

⁵⁰ See *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19457-58, para. 86. The Commission found that forbearing from section 251(c)(2) interconnection and related section 251(c) requirements such as collocation likely would give Qwest, which was the "only carrier in the Omaha MSA to have a ubiquitous network," the ability to exercise market power over interconnection in the Omaha MSA. See *id.*

⁵¹ 47 U.S.C. § 160(a)(2).

⁵² See Mid-Rivers Comments at 2.

⁵³ 47 U.S.C. § 251(a)(1).

⁵⁴ 47 U.S.C. § 160(a)(3).

⁵⁵ As the Commission noted in the *Mid-Rivers Order*, Mid-Rivers is subject to the section 251(f) rural exemption for these requirements until Mid-Rivers receives a *bona fide* request for interconnection, services, or network elements and the state commission determines that such a request is not unduly economically burdensome, is technically feasible, and is consistent with section 254. See 47 U.S.C. § 251(f).

⁵⁶ See *Mid-Rivers Order*, 21 FCC Rcd at 11515, para. 19 n.56.

⁵⁷ See *supra* para. 13.

Terry exchange have continued to decline in number.⁵⁸ We find that this showing of competition ensures that enforcement of section 251(c)(3)'s unbundling obligations is no longer necessary under section 10(a)(1) to ensure that Qwest's charges, practices, classifications, or regulations are just and reasonable or not unjustly or unreasonably discriminatory in this exchange.⁵⁹ Further, the record reflects that Mid-Rivers does not rely on Qwest's unbundled network elements to provide service in the Terry exchange.⁶⁰ Thus, given that the vast majority of consumers in the Terry exchange receive their telecommunications services without reliance on Qwest's network elements, we conclude under section 10(a)(2) that enforcement of section 251(c)(3) is not necessary for the protection of consumers.

18. We also find that relieving Qwest from the section 251(c)(3) obligations is in the public interest under section 10(a)(3) because Qwest now faces substantial competition in the Terry exchange that does not rely on Qwest's network.⁶¹ The Commission recognizes that relieving Qwest of the obligation to provide network elements leaves Mid-Rivers, as the incumbent LEC for the purposes of section 251, the sole party responsible for providing these services in the Terry exchange.⁶² However, as we found in the *Mid-Rivers Order*, it is unlikely that another competitor will enter the Terry exchange given that it is a very small rural exchange where two facilities-based service providers already exist.⁶³ Moreover, we conclude that forbearance from section 251(c)(3) obligations is in the public interest because the costs of unbundling obligations in the Terry exchange outweigh the benefits. As the Commission has previously found, while the costs of regulatory intervention may be warranted in order to foster competitive entry into local exchange markets where such competition would not otherwise be generated, these costs are unwarranted and do not serve the public interest once local exchange markets are sufficiently competitive.⁶⁴ This is clearly the case in the Terry exchange. Thus, applying section 10(a), we conclude that it is appropriate to forbear from applying section 251(c)(3) to Qwest in the Terry exchange.

3. Section 251(c)(4) Resale Obligations

19. The unique competitive circumstances in the Terry exchange support our determination that enforcement of Qwest's section 251(c)(4) resale obligations is not necessary to ensure that charges, practices, classification, or regulations remain just, reasonable, and nondiscriminatory in the Terry exchange. As discussed above, Mid-Rivers serves approximately 93 percent of the access lines in the entire Terry exchange, has a ubiquitous network in the Terry exchange, and can serve the entire exchange

⁵⁸ See Qwest Feb. 5, 2008 *Ex Parte* Letter at 1.

⁵⁹ We distinguish our finding here from the Commission's determination in the *Qwest Omaha Forbearance Order* that its grant of forbearance from certain section 251(c)(3) obligations relied in part on Qwest's continuing resale, interconnection, and section 271(c) obligations in the Omaha MSA. See *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19447, para. 64. As we conclude, *infra*, the enforcement of these obligations in the Terry exchange is no longer necessary for the protection of consumers or to ensure that charges, practices, classification, or regulations are just and reasonable or not unjustly or unreasonably discriminatory. We further conclude that forbearance from these obligations is consistent with the public interest, in accordance with section 10(a)(3). Thus, because we conclude that these resale, interconnection, and section 271 obligations are no longer necessary in the Terry exchange, we need not condition our forbearance from section 251(c)(3)'s unbundling obligations on their enforcement.

⁶⁰ See Mid-Rivers Comments at 1-2 & n.3.

⁶¹ 47 U.S.C § 160(a)(3).

⁶² See *supra* note 55.

⁶³ See *Mid-Rivers Order*, 21 FCC Rcd at 11515, para. 19 n.56.

⁶⁴ See *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19454, para. 77.

with its own facilities. This showing of competition ensures that Qwest is unable to implement charges, practices, classifications, or regulations that are not just and reasonable or that are unjustly or unreasonably discriminatory in this exchange, thus satisfying section 10(a)(1). Further, the record reflects that competitors in the Terry exchange do not depend on section 251(c)(4) wholesale services to provide competitive services in the Terry exchange.⁶⁵ Based on these competitive factors, we conclude that forbearance from the requirements of section 251(c)(4) does not place consumers in jeopardy, and therefore meets the section 10(a)(2) requirement. Further, Qwest remains obligated under resale requirements in section 251(b)(1).⁶⁶ Finally, we also find that relieving Qwest from its section 251(c)(4) resale obligations is in the public interest under section 10(a)(3) because Qwest faces substantial competition in the Terry exchange that does not rely on Qwest's network. Thus, we grant Qwest's petition to the extent it seeks forbearance from the resale obligations of section 251(c)(4) in the Terry exchange.

4. Section 251(c)(1) Good Faith Negotiation Obligations

20. We need not address Qwest's request for forbearance regarding section 251(c)(1). That provision imposes on incumbent LECs the duty to negotiate in good faith, in accordance with section 252, terms and conditions of agreements to fulfill the section 251(b) and (c) duties.⁶⁷ Given that we grant Qwest forbearance from its obligations under sections 251(c)(2)-(6), above, section 251(c)(1)'s duty to negotiate in good faith agreements to fulfill duties under section 251(c) is no longer applicable.⁶⁸ Qwest, however, retains its duties and obligations under section 251(c)(1) to negotiate in good faith the terms and conditions for agreements to fulfill Qwest's obligations under section 251(b).

C. Forbearance Analysis for Sections 271(c)(2)(B)(i), (ii), (iv)-(vi), (xiv)

21. For the reasons discussed below, pursuant to section 10(a), we forbear from certain requirements of section 271(c)(2)(B) as they apply to Qwest in the Terry exchange.⁶⁹ Qwest seeks forbearance from 6 of the 14 competitive checklist items contained in section 271(c)(2)(B), namely checklist items 1, 2, 4 through 6, and 14.⁷⁰ For our analysis, we group these requirements into two categories. The first category consists of checklist items 1, 2, and 14, which each incorporate obligations

⁶⁵ See Mid-Rivers Comments at 1-2.

⁶⁶ We also note that, despite our forbearance from the wholesale requirements of section 251(c)(4), the very high levels of competition that do not rely on Qwest's facilities in the Terry exchange provide Qwest with the incentive to make attractive wholesale offerings available so that it will derive more revenue indirectly from customers who choose a retail provider other than Qwest. See *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19449, para. 67.

⁶⁷ See 47 U.S.C. § 251(c)(1).

⁶⁸ We note that we do not have the same reciprocity concerns here that we did in the *Qwest Omaha Forbearance Order*. In the *Qwest Omaha Forbearance Order*, the Commission largely denied Qwest's petition for forbearance from the obligations of section 251(c), preserving Qwest's obligations under sections 251(c)(2), (4)-(6). See *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19458, para. 87. Because Qwest retained these obligations, requesting telecommunications carriers had a reciprocal duty to negotiate agreements for these services in good faith under section 251(c)(1). The Commission found that it would not be in the public interest to grant Qwest relief from its duty to negotiate in good faith, when the requesting telecommunications carriers would remain subject to these obligations. See *id.* Here, we do not have those same concerns because we forbear from applying sections 251(c)(2)-(6) to Qwest in the Terry exchange.

⁶⁹ See *supra* Section II.A (discussing the obligations of section 271(c)(2)(B)).

⁷⁰ See Qwest Petition at 1-6; see also Qwest Mar. 31, 2008 *Ex Parte* Letter.

of section 251(c) by reference.⁷¹ The second category consists of checklist items 4 through 6, which are independent obligations under the Act. In contrast to checklist items 1, 2, and 14, which incorporate by reference other provisions of the Act, checklist items 4 through 6 establish independent and ongoing obligations for BOCs to provide wholesale access to loops, transport, and switching, irrespective of any impairment analysis under section 251 to provide unbundled access to such elements.⁷² We conclude with respect to both the first and second categories that forbearance is warranted based on the current record.

1. Section 10(a)(1) – Charges, Practices, Classifications, and Regulations

22. **Section 271(c)(2)(B)(i), (ii), and (xiv) (Checklist items 1, 2, and 14).** We conclude that Qwest has demonstrated that it is entitled to forbearance from its obligations to provide interconnection, UNEs, and resale pursuant to section 271(c)(2)(B)(i), (ii), and (xiv) (*i.e.*, checklist items 1, 2, and 14) to the same extent that it has demonstrated that it is entitled to forbearance from the requirements of sections 251(c)(2)-(4). The scope of the requirements of checklist items 1, 2, and 14 is coextensive with specific requirements set forth in section 251(c) and section 252(d). Specifically, under checklist items 1, 2, and 14, a BOC must provide interconnection, UNEs, and resale “in accordance with the requirements of” the relevant subsections of 251(c) and 252(d).⁷³ As a result, as the Commission and reviewing courts previously have stated, if a BOC must provide interconnection, UNEs, or resale pursuant to sections 251(c)(2)-(4), it must also provide interconnection, UNEs or resale pursuant to checklist items 1, 2, and 14 of section 271(c)(2)(B).⁷⁴ Thus, just as it would not make sense for the Commission to forbear from sections 271(c)(2)(B)(i), (ii), and (xiv) while the obligations of sections 251(c)(2)-(4) remain in effect, it similarly would not make sense for the Commission to deny forbearance from sections 271(c)(2)(B)(i), (ii), and (xiv) if a carrier has no corresponding obligations under sections 251(c)(2)-(4). As such, we find

⁷¹ Checklist item 1 requires Qwest to provide “[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).” 47 U.S.C. § 271(c)(2)(B)(i). Checklist item 2 requires Qwest to provide “nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).” 47 U.S.C. § 271(c)(2)(B)(ii). Checklist item 14 requires Qwest to make “telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).” 47 U.S.C. § 271(c)(2)(B)(xiv); *see also Application of Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services Inc. for Authorization to Provide In-region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419, 17519-30, 17542, paras. 17-44, 67 (2001) (*Verizon Pennsylvania Section 271 Order*).

⁷² *See Triennial Review Order*, 18 FCC Rcd at 17384, para. 653. Section 271(c)(2)(B)(iv) of the Act requires that a BOC provide “[l]ocal loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.” 47 U.S.C. § 271(c)(2)(B)(iv). Section 271(c)(2)(B)(v) requires a BOC to provide “[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.” 47 U.S.C. § 271(c)(2)(B)(v). Section 271(c)(2)(B)(vi) requires a BOC to provide “[l]ocal switching unbundled from transport, local loop transmission, or other services.” 47 U.S.C. § 271(c)(2)(B)(vi); *see also Verizon Pennsylvania Section 271 Order*, 16 FCC Rcd at 17532-536, paras. 48-56.

⁷³ *See* 47 U.S.C. §§ 271(c)(2)(B)(i), (ii), (xiv).

⁷⁴ *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4742, n.374 (2005) (seeking comment on whether the statutory language regarding the duty to interconnect directly or indirectly under section 251(a) should be read to encompass an obligation to provide transit service and stating that “a determination that incumbent LECs have a transiting obligation pursuant to section 251(c)(2) would also trigger an obligation to provide such a service under section 271(c)(2)(B)(i)”); *see also Sprint Communications Co. L.P. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001) (stating that some of the section 271(c)(2)(B) “requirements are simply incorporations by reference of obligations independently imposed on the BOCs by §§ 251-52 of the Act”).

that it is appropriate for us to forbear from the obligations of checklist items 1, 2, and 14, having already forbore from sections 251(c)(2)-(4).⁷⁵

23. Given this relationship between the statutory provisions, the analysis underlying our decision to forbear from section 251(c)(2)-(4) also supports our decision regarding sections 271(c)(2)(B)(i), (ii), and (xiv). Namely, we conclude that in light of the unique circumstances in the Terry exchange of a complete overbuild by a carrier now considered an incumbent LEC for the purposes of section 251 and our finding that the Terry exchange is a very small rural exchange, Qwest has demonstrated that sufficient facilities-based competition exists in the Terry exchange to justify forbearance.⁷⁶ In the evidence of sufficient competition, we find that access to interconnection, UNEs, and resale options ensures that enforcement of sections 271(c)(2)(B)(i),(ii), and (xiv) (*i.e.*, checklist items 1, 2, and 14) is not necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable, and not unreasonably discriminatory.

24. **Section 271(c)(2)(B)(iv)-(vi) (Checklist items 4-6).** Based on the same competitive showing, we find that enforcement of sections 271(c)(2)(B)(iv)-(vi) (*i.e.*, checklist items 4-6) is not necessary to ensure that telecommunications services available to customers can be offered on just, reasonable, and nondiscriminatory terms. The competitive circumstances present in the Terry exchange are distinguishable from those under consideration in the *Qwest Omaha Forbearance Order*. In the *Qwest Omaha Forbearance Order*, the Commission found that competitors in the Omaha MSA continued to need access to Qwest's facilities to provide service to many locations.⁷⁷ As such, the Commission denied Qwest forbearance from its obligations under checklist items 4, 5, and 6 because there did not exist "sufficient facilities-based competition" in the Omaha MSA.⁷⁸ Further, the Commission justified its decision in the *Qwest Omaha Forbearance Order* to forbear from section 251(c)(3) in part because of the retail competition that depended on Qwest's wholesale offerings as well as the potential competition facilitated by the Commission's other rules, including the section 271 checklist.⁷⁹ In contrast, Mid-Rivers serves approximately 93 percent of the access lines in the entire Terry exchange, has a ubiquitous network in the Terry exchange, and can serve the entire exchange with its own facilities.⁸⁰ Thus, Qwest's primary competitor in the Terry exchange is not dependent on Qwest services or facilities to offer its services.⁸¹ Further, it is unlikely that other carriers will enter the Terry exchange, given that Mid-Rivers has completely overbuilt Qwest's network and that Terry is a very small rural town. Therefore, based on the unique competitive circumstances of the Terry exchange, we conclude that enforcement of the requirements of sections 271(c)(2)(B)(iv)-(vi) to provide interconnection, UNEs, and resale, and to provide wholesale access to Qwest's loops, switching, and transport elements is not necessary to ensure that telecommunications services can be offered on just, reasonable, and nondiscriminatory terms.

⁷⁵ See *supra* Part III.B.1 (discussing forbearance from section 251(c)(2), (5), and (6) interconnection obligations); III.B.2 (discussing forbearance from section 251(c)(3) UNE obligations); III.B.3 (discussing forbearance from section 251(c)(4) resale obligations).

⁷⁶ See *supra* Parts III.B.1, III.B.2, III.B.3. For the sake of brevity, we do not restate our section 10(a) analysis in full here.

⁷⁷ See *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19470, para. 110.

⁷⁸ See *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19466, para. 103.

⁷⁹ See *supra* paras. 4-5, n.59; *Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19467-68, para. 105.

⁸⁰ See *supra* para. 13.

⁸¹ See Mid-Rivers Comments at 1-2 (stating that Mid-Rivers is not dependent on Qwest services or facilities to offer its services).

2. Section 10(a)(2) – Protection of Consumers

25. In order to forbear from applying to Qwest the section 271(c)(2)(B) obligations to provide interconnection, UNEs, and resale pursuant to section 271(c)(2)(B)(i), (ii), and (xiv) and to provide access to loops, transport, and switching pursuant to section 271(c)(2)(B)(iv)-(vi) in the Terry exchange, section 10(a)(2) requires us to analyze whether such application is necessary to ensure the protection of consumers.⁸² For the same reasons that persuade us that Qwest has demonstrated that these requirements as applied to its legacy elements are not necessary under section 10(a)(1), namely, the unique competitive circumstances present in the Terry exchange and the complete overbuild by a carrier now considered an incumbent LEC for the purposes of section 251, we also conclude that Qwest has demonstrated that these requirements are unnecessary for the protection of consumers under section 10(a)(2). Because we have explained these reasons above, we do not repeat that discussion here.⁸³

3. Section 10(a)(3) – Public Interest

26. Finally, Qwest has shown that it satisfies the requirements of section 10(a)(3) with regard to the two categories of checklist items.⁸⁴ Specifically, we must consider whether forbearance from the application to Qwest of its obligations under checklist items 1, 2, 4 through 6, and 14 is consistent with the public interest. In the Terry exchange, where competition is not based on the use of Qwest's facilities, eliminating the requirements to provide interconnection, UNEs, and resale, and to provide wholesale access to Qwest's loops, switching, and transport elements is not likely to result in a reduction in competition. Further, as discussed above, we believe it is unlikely that another competitor will enter the Terry exchange because Terry is a very small rural exchange and there already exist two facilities-based service providers in the exchange.⁸⁵ Thus, while we recognize that forbearing from these requirements may not enhance competition in the Terry exchange, we find that eliminating certain section 271 access obligations for legacy facilities is consistent with the public interest. Qwest already faces substantial competition in the Terry exchange that does not rely on Qwest's network, and there are unlikely to be any new competitors that will rely on Qwest's facilities. As such, we conclude that granting Qwest's petition is consistent with the public interest.

D. Forbearance Analysis for Section 252

27. We conclude that section 10(a) is satisfied with respect to forbearance from regulating Qwest as an incumbent LEC for purposes of section 252 in the Terry exchange. We find that regulating Qwest as an incumbent LEC under section 252 is not necessary to ensure just and reasonable charges and practices in Terry for largely the same reasons that we find forbearance is appropriate for relief from section 251(c).⁸⁶ As we explain above, Mid-Rivers has substantially replaced Qwest in the Terry exchange, servicing at least 93 percent of retail access lines. Because of the unique circumstances in Terry, where there has been a near complete overbuild of facilities, we believe that Qwest no longer has

⁸² 47 U.S.C. § 160(a)(2).

⁸³ See *supra* paras. 22-24.

⁸⁴ 47 U.S.C. § 160(a)(3).

⁸⁵ See *supra* para. 13.

⁸⁶ Section 251(c)(1), which we discuss in Part III.B.4, above, incorporates certain of Qwest's obligations under section 252 by reference. See 47 U.S.C. § 251(c)(1) (imposing on incumbent LECs the "duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection"). Thus, we note that our decision to forbear from regulating Qwest as an incumbent LEC under section 252 in Terry exchange is consistent with our finding that portions of section 251(c)(1) no longer apply to Qwest in the Terry exchange.

the market power and bargaining advantage that were thought to necessitate section 252. As such, because of the competitive circumstances in Terry, we believe it is no longer necessary to impose section 252's market opening procedures on Qwest. For largely the same reasons, sections 10(a)(2) and 10(a)(3) are satisfied as well. If Qwest attempted to use relief from incumbent LEC regulation under section 252 to harm consumers, those consumers would simply leave Qwest. As such, we find that regulation of Qwest as an incumbent LEC under section 252 in the Terry exchange is no longer necessary to protect consumers. Furthermore, we find that the public interest will be advanced by eliminating economic distortions caused by the imposition of extensive regulation on Qwest, which is only a small provider in the Terry exchange. Thus, consistent with our findings above regarding section 251(c), we find that it is appropriate to forbear from regulating Qwest as an incumbent LEC for purposes of section 252 in the Terry exchange. We note that Qwest remains obligated under those provisions of section 252 that may apply to all LECs, and retains its duty to negotiate in good faith agreements pertaining to its section 251(b) obligations.

IV. EFFECTIVE DATE

28. Consistent with section 10 of the Act and our rules, the Commission's forbearance decision shall be effective on April 21, 2008.⁸⁷ The time for appeal shall run from the release date of this Order.

V. ORDERING CLAUSE

29. Accordingly, IT IS ORDERED, pursuant to section 10(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 160(c), that the Qwest Corporation's Petition for Forbearance in Terry, Montana, filed January 22, 2007, IS GRANTED to the extent described herein and otherwise IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁸⁷ See 47 U.S.C. § 160(c) (deeming the petition granted as of the forbearance deadline if the Commission does not deny the petition within the time period specified in the statute); 47 C.F.R. § 1.103(a) ("The Commission may, on its own motion or on motion by any party, designate an effective date that is either earlier or later in time than the date of public notice of such action.").